

24. 02.07.2024
Court
No.28 (Tanmoy)

Allowed

IN THE HIGH COURT AT CALCUTTA
CRIMINAL MISCELLANEOUS JURISDICTION

CRM (DB) 1789 of 2024

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure, 1973, in connection with **Hariharpara Police Station Case No. 191 of 2021**, dated **17.05.2021** under Sections **302/34** of the Indian Penal Code.

And

In the matter of: - **Mosaraf Shah @ Mosarof Shah**

...petitioner.

Mr. Parthapratim Das, Adv.,
Mr. Monajit Chakraborti, Adv.

...for the petitioner.

Ms. Anasuya Sinha, Ld. APP,
Mr. Sujan Chatterjee, Adv.

...for the State.

Mr. Ali Ahasan Alamgir, Adv.,
Ms. Soma Mal, Adv.,
Ms. Rabia Khatoon, Adv.

...for the *de facto* complainant.

The charge is of murder. The petitioner says that there is insufficient evidence against him. In any event, co-accused persons, who are similarly circumstanced, have been granted bail by the learned Trial Court. The petitioner also says that he is in custody for about three years and one month. Charge has not yet been considered. He prays for bail.

Learned Advocates for the State and the *de facto* complainant strongly oppose the prayer for bail. They say that the delay in the trial cannot be attributed to the State. The co-accused persons were granted bail long time back. Thereafter the present petitioner's bail prayer was rejected on more than one occasion by this Court. Hence, he cannot claim parity.

We have considered the facts and circumstances of the case and the material on record. We do not wish to make any comment on merits. However, we do note that charge-sheet was filed in September, 2021. Till date the issue of consideration of charges has not been taken up before the learned Trial Court. There are thirty witnesses named in the charge-sheet. There is absolutely no chance of early conclusion of the trial.

We cannot lose sight of a citizen's fundamental right to personal liberty and speedy trial as contemplated under Article 21 of the Constitution of India. Accordingly, solely on the ground of delay in trial, we are inclined to grant bail to the petitioner but on stringent conditions.

Accordingly, we direct that the petitioner, namely, **Mosaraf Shah @ Mosarof Shah**, shall be released on bail upon furnishing a bond of Rs.10,000/- (Ten Thousand) with two registered sureties of like amount each, one of whom must be local, to the satisfaction of the learned Chief Judicial Magistrate, Berhampore, Murshidabad, subject to condition that the present petitioner shall appear before the learned Trial Court on each date of substantive hearing subject to the provisions of Section 317 of the Code of Criminal Procedure, 1973. The petitioner shall remain within the jurisdiction of the learned Trial Court till conclusion of trial unless such conditions have been relaxed by the learned Trial Court.

In the event the petitioner fails to adhere to any of the conditions stipulated above without any justifiable cause, the learned Trial Court shall be at liberty to cancel the petitioner's

bail in accordance with law without further reference to this Court.

The application for bail being CRM (DB) 1789 of 2024 is accordingly disposed of.

Criminal Section is directed to supply urgent photostat certified copies of this order to the parties, if applied for, upon compliance of all necessary formalities.

(Arijit Banerjee, J.)

(Apurba Sinha Ray, J.)